

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE GUARDIAN NEWS, INC. and SELIM
ZHERKA,

Plaintiffs,

07 Civ. 07078 ()

-against-

PHILIP AMICONE, individually,
EDMUND HARTNETT, individually,
JOHN A. LISZEWSKI, individually
CITY OF YONKERS, New York,
PAUL WOOD, individually, POLICE
OFFICERS JOHN DOE'S #1 to #20,
individually, and SANITATION WORKERS
#1 to #20,

**AFFIRMATION IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION**

Defendants.

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JONATHAN LOVETT, an attorney duly admitted to practice before this Court
hereby affirms under penalty of perjury that the following statement is true:

1. I am counsel to the Plaintiffs and submit this affirmation in support of their
motion, made pursuant to FRCP 65(a), for a preliminary injunction barring the
Defendants' from: i) confiscating any newsracks placed by The Guardian News, Inc. on
city-owned property in the City of Yonkers for distribution of The Westchester Guardian;
confiscating any copies of The Westchester Guardian intended to be distributed on City-
owned premises within the City of Yonkers; threatening employees of The Guardian
News with arrest/incarceration for distributing The Westchester Guardian within the City
of Yonkers; threatening your Plaintiff Selim Zerkha with arrest/incarceration for
distributing The Westchester Guardian within the City of Yonkers; issuing to said

employees and your Plaintiff Zherka appearance tickets charging them with violating the City Charter for distributing The Westchester Guardian; and *inter alia* directing the Defendants to forthwith return to Plaintiffs all of the confiscated newsracks and newspapers.

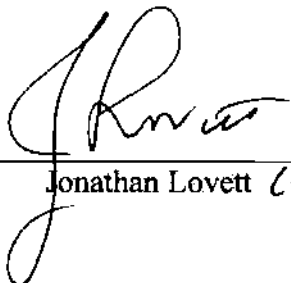
2. Based upon the facts set forth in the accompanying affidavit of Selim Zherka I submit:

- a. Defendants' conduct in targeting/confiscating The Westchester Guardian, confiscating newsracks placed in the City of Yonkers by The Westchester Guardian, Inc. for the distribution of The Westchester Guardian, threatening arrest/incarceration of employees of The Westchester Guardian, Inc. for non-disruptively distributing copies of The Westchester Guardian on property owned by the City of Yonkers, threatening Plaintiff Zherka with arrest/incarceration for that same conduct, and issuing appearance tickets to Mr. Zherka and employees of The Westchester Guardian, Inc. for non-disruptively disseminating that newspaper on City-owned property violates Plaintiffs' rights as guaranteed by the First Amendment to the United States Constitution, 42 U.S.C. §1983,
- b. Such conduct, under the pertinent case law cited in the accompanying memorandum of law, constitutes "irreparable injury" for purposes of granting a preliminary injunction, and,
- c. Plaintiffs are most certainly going to prevail on the merits of their claims as set forth in their complaint.

3. In connection with Plaintiffs' claims and on August 21, 2007, your affirmant received the annexed letter from Kevin J. Plunkett, Esq. in which he advises that he represents the City of Yonkers in several of The Guardian News, Inc. lawsuits and that the "City of Yonkers is in possession of approximately 33 'newsracks' which we believe belong to [my] client".

WHEREFORE a hearing should be held pursuant to FRCP 65(a), following which a preliminary injunction should be granted barring the Defendants' from: i) confiscating any newsracks placed by The Guardian News, Inc. on city-owned property in the City of Yonkers for distribution of The Westchester Guardian; confiscating any copies of The Westchester Guardian intended to be distributed on city-owned premises within the City of Yonkers; threatening employees of The Guardian News with arrest/incarceration for distributing The Westchester Guardian within the City of Yonkers; threatening your Plaintiff Zherka with arrest/incarceration for distributing The Westchester Guardian within the City of Yonkers; issuing to said employees and Plaintiff Zherka appearance tickets charging them with violating the City Charter for distributing The Westchester Guardian on city-owned property; and *inter alia* directing the Defendants to forthwith return to Plaintiffs all of the confiscated newsracks and newspapers.

Dated: White Plains, N.Y.
August 27, 2007


Jonathan Lovett (4854)

Thacher Proffitt

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August 21, 2007

VIA FACSIMILE (914) 428-8916

Jonathan Lovett, Esq.
Lovett & Gould, LLP
222 Bloomingdale Road
White Plains, New York 10605

Re: The Guardian News, Inc.

Dear Jon:

This firm represents the City of Yonkers and its officials in connection with the four lawsuits filed by your office in the Federal District Court, Southern District of New York, White Plains Branch, concerning the above-referenced organization.

Please be advised that the City of Yonkers is in possession of approximately 33 "newsracks" which we believe belong to your client. These "newsracks" were removed because they were not in compliance with City regulations for the placement of such racks or boxes. Your client may contact the City of Yonkers Department of Public Works, Commissioner John A. Liszewski, to retrieve these "newsracks". Assuming proper identification is submitted to the City of Yonkers, these 33 "newsracks" will be released to your client.

Please inform your client that in order for "newsracks" to be placed in a public street in the City of Yonkers, the "newsracks" must comply with City of Yonkers Code §§ 33-4 and 103-94(A)(B) and the City of Yonkers Zoning Code § 43. The City has no desire to restrict the distribution of your paper as long as the distribution is done in a lawful manner safeguarding the public rights of way from illegal obstructions.

Commissioner Liszewski, can be contacted at The Department of Public Works at: (914) 377-6267. He will arrange for the release of the racks.

August 21, 2007

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Please feel free to contact me should you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kevin J. Plunkett". The signature is stylized, with a large "K" and a cursive "E".

Kevin J. Plunkett

cc: Commissioner John Liszewski
Frank J. Rubino, Esq.